

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1851 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HEIRS AND LEGAL REPRESENTATIVE OF RANCHHODBHAI ZAVERBHAI

Versus

KHODABHAI TALSIBHAI PATEL

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Appearance:

Mr.Dhaval C.Dave for Petitioners

MR AJ PATEL for Respondent No. 1

SERVED BY DS for Respondent No. 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 29/11/96

ORAL JUDGEMENT

The petitioners are the heirs and legal representatives of one Ranchhodbhai Zaverbhai Gohil. In course of the Tenancy Proceedings initiated in the year 1961 under section 32 (g) of the Bombay Tenancy and Agricultural Lands Act, 1948, said Ranchhodbhai submitted before the Mamlatdar that some years ago, he had cultivated the land bearing survey No. 325 admeasuring 1

Acre, 37 G. of village Mogari. He further stated that for past five to six years, he had not cultivated the said land. Considering the statement, the Mamlatdar made an order deleting name of late Ranchhodbhai as the tenant of the said land and closed the proceedings initiated under section 32 (g) of the Act. Feeling aggrieved, late Ranchhoddas preferred appeal before the Deputy Collector, Kheda against the above referred order dated 15th August, 1961. Said appeal was dismissed on 14th October, 1987. The order made on appeal has been confirmed by the Gujarat Revenue Tribunal by its judgment and order dated 27th October, 1995 passed in revision application No. Ten.B.A.60 of 1988.

2. Feeling aggrieved, the petitioners[ heirs of late Ranchhoddas ] have preferred this petition. It is contended that the notice of hearing of appeal issued by the Deputy Collector was not received by the petitioners and was erroneously served to a third party. Hence, the petitioners could not remain present before the lower appellate authority and the matter was decided in their absence. Considering the evidence on record, the Tribunal had found that the notice of hearing was served upon Zaverbhai who happened to be father of the late Ranchhodbhai Zaverbhai and had accepted service of notice on behalf of Ranchhodbhai. Further, the Tribunal has recorded findings that late Ranchhodbhai was not the tenant of the land.

3. Be that as it may, it should be noted that the said late Ranchhodbhai had made statement before the Mamlatdar that he had not cultivated the land for five to six years preceding the date of the statement. Pursuant to the said statement, the order made on 15th August, 1961 a mutation entry in the revenue record were also made accordingly. Late Ranchhodbhai did not challenge either said order dated 15th August, 1961 nor he challenged the entry made in the revenue record pursuant to the said order. In my opinion, therefore, the appeal preferred by said Ranchhodbhai 25 years after the date of the order is not maintainable and requires to be rejected as such. Besides, there is nothing on record to indicate that late Ranchhodbhai was in fact tenant of the land on the appointed date. In the circumstances, this petition is dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated. The petitioners shall bear the costs of this petition.

4. Mr. Dave requests that the ad-interim order made on 28th June, 1996 be continued for a period of three weeks so as to enable the petitioners to approach the

higher forum. Request is granted. Ad-interim order made on 28th June, 1996 shall continue to operate till 23rd December, 1996.

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